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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/772,029

01/29/2001

Stuart G. Oxford

9141

22885

7590

07/27/2004

MCKEE, VOORHEES & SEASE, P.L.C.

801 GRAND AVENUE

SUITE 3200

DES MOINES, IA 50309-2721

EXAMINER

CROW, STEPHEN R

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/772,029	Applicant(s) OXFORD, STUART G	
	Examiner Steve R Crow	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-15, 17, 21, 23-26 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-15, 17, 21, 23-26, 28-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Tong et al.

Tong et al discloses a bouncing boot exercise device having a parabolic lower portion 12, a foot support 16 which resists motion of the user's foot. Note the inverted U-shaped member 39.

The examiner contends that shoes and boots typically include foam inserts for user comfort , which are soft and thereby conform to a user's feet and form a recessed portion.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seel et al in view Hoyle et al and further in view of Kost and Timko.

Seel et al discloses a body exercise device comprising a lower portion 16 which has a generally parabola shape, a foot support and retaining portion 122 at the upper end which supports and retains a person's foot therein.

Hoyle et al discloses slits 72 in a user foot platform 70 for providing straps 74 used for adjustably securing a user's foot to the platform. In view of this teaching, it would have been obvious to one skilled in the art to desire to secure a user's foot to the Seel platform. This would have been accomplished by providing the Seel platform with slits which receive straps for securing the user's foot to the platform.

Seel et al states in column 5 lines 55+ that "other means to prevent slippage of the foot on the platform" can be used.

Kost teaches the use of deep recesses 40-41 on a foot platform to secure a user during exercise activity.

Timko teaches the use of shallow recesses on a platform 20 for supporting a person.

In view of these teachings, it would have been obvious to one skilled in the art to substitute a shallow recess for the Seel anti-slip surface to prevent foot slippage during exercise and yet be able to retain functionality of the device.

**4. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seel et al in view of Hoyle et al ,Kost , Timko and further in view of Little.**

Little shows in figures 5-6 elongated members 52 which have lower ends received by pipe stubs 50. In view of this teaching, it would have been obvious to one skilled in the exercise art to modify the Seel et al device by substituting a hollow pipe rod which engages with an elongated rod as an obvious design variant to accommodate more weights.

***Double Patenting***

1. Claims 1-8, 10-15, 21, 24, -30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6238325. Although the conflicting claims are not identical, they are not patentably distinct from each other because of their common disclosures.

***Response to Arguments***

1. Applicant's arguments filed 5-3-04 have been fully considered but they are not persuasive.

Applicant's arguments, have persuaded the examiner to withdraw some of the claim rejections. But, as stated above, the examiner contends that shoes and boots typically include foam inserts for user comfort, which are soft and thereby conform to a user's feet and form a recessed portion.

***Conclusion***

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve R Crow whose telephone number is 703-308-3398. The examiner can normally be reached on Reg:8:30-6;Off First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4520 for regular communications and 703-306-4520 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

SC



STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332